



Legislative Research Council

SouthDakota

MINUTES

GOVERNMENT OPERATIONS AND AUDIT COMMITTEE

Senator Larry Tidemann, Chair
Representative Dan Dryden, Vice Chair

Fifth Meeting
2014 Interim
November 13, 2014

Room 413
State Capitol Building
Pierre, South Dakota

The fifth meeting of the 2014 Interim Government Operations and Audit Committee (Committee) was called to order by Chair Tidemann at 9:03 a.m., November 13, 2014, in LRC Room 413, State Capitol Building, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Heineman, Hunhoff, Lucas, and Tidemann. Representatives Cronin, Dryden, and Mickelson. Representative Wismer joined via conference call. Representative Magstadt and Senator Curd were excused.

Staff members present were Mr. Martin Guindon, Auditor General; Mr. Bob Christianson and Mr. Tim Flannery, State Government Audit Managers for the Department of Legislative Audit (DLA).

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order.

Approval of Minutes and Agenda

Senator Lucas moved, seconded by Representative Dryden, the minutes of the September 24, 2014 meeting be approved ([Minutes 9-24-14 Meeting Doc.1](#)). Motion prevailed unanimously on a voice vote. Representative Cronin moved, seconded by Representative Dryden, the agenda for the November 13, 2014 meeting be approved. Motion prevailed unanimously on a voice vote.

Item 1 – Department of Public Safety – Annual report from the State 911 Coordinator for state fiscal year 2014 *(the bullet below is a document the Committee sent out)*

- [Letter to Public Safety Doc.2](#)

Ms. Shawnie Rechtenbaugh, State 911 Coordinator, Department of Public Safety (DPS), was present to address the Committee. Ms. Rechtenbaugh stated that as the state coordinator she works directly with the South Dakota 911 Coordination Board, an eleven member board appointed by the Governor. She stated that there are currently thirty-three Public Safety Answering Points (PSAPs), the same number as last year. A map was provided that shows the locations of the PSAPs ([PSAP Map Doc.13](#)).

Ms. Rechtenbaugh discussed the annual report ([State 911 Report 2014 Doc.3](#)) and some of the changes that have taken place in the last year. She discussed a flow chart in the report that shows the distribution of the \$1.25 surcharge. In fiscal year (FY) 2014 the total revenue collected for this surcharge was \$12.2 million. After the \$1.25 surcharge is collected, the surcharge is transferred to the DPS which disburses seventy percent of the revenue to the public agencies which have adopted an ordinance authorizing a 911 emergency reporting system (back to the county/municipality where the funds were collected). The remaining thirty percent of the \$1.25 surcharge is deposited into the Public Safety 911 Emergency Fund and that money is split into two sections. Qualifying PSAPs (a PSAP that serves three counties or 30,000 people and is compliant with all administrative rules) receive twenty-six percent (there are currently eleven

qualifying PSAPs that receive this funding – also described as incentive funds) and the other seventy-four percent goes into the State 911 Coordination Fund. At the end of FY 2014 the State 911 Coordination Fund had a cash balance of \$6.49 million.

Ms. Rechtenbaugh discussed the PSAP reviews that are done on a yearly basis. The eleven PSAPs that receive the incentive money, for being in full compliance, are reviewed on an annual basis. The other PSAPs are reviewed as time permits. Of the twenty nine PSAPs that are non-tribal PSAPs, there are six PSAPs that have not been reviewed this year. Eleven of the twenty nine PSAPs have been found to be noncompliant and the type of noncompliance varies.

Ms. Rechtenbaugh discussed the different types of noncompliance observed and stated that there are eighty-four compliance requirements that are reviewed. After the completion of each review, a report is submitted to the 911 Board, the PSAP, and the County and/or City Commission. Ms. Rechtenbaugh stated that she checks back with each PSAP to see if there is any additional help she can provide them.

Representative Wismer asked for an example of noncompliance found in the reviews and if there was noncompliance for the incorrect use of funds. Ms. Rechtenbaugh said none of the items discussed to this point have dealt with financial issues. The most common non-compliance is not having a written back-up plan in case of an emergency in the building, such as a tornado, flood, fire, etc. PSAPs are required to have a plan to relocate within sixty minutes. There are eight PSAPs that currently do not have a written back-up plan.

Senator Heineman asked if the noncompliance could have an effect on public safety. Ms. Rechtenbaugh stated the requirements they look for are the minimum standard for public safety. The Board felt that these standards are the standards that need to be met to run effectively. Helping the PSAPs come into compliance is the Board's goal. Ms. Rechtenbaugh added that there are grants available for the centers needing financial assistance to make the necessary corrections.

Ms. Rechtenbaugh provided an update on the Next Generation (Nexgen) 911 project. She stated the project has been the primary focus of the board for the last year. In January 2014, there were two RFPs released. One RFP was for the statewide geographic system and maintenance of that system. The other was for the Emergency Service Internet Protocol System and for a statewide hosted 911 call system. In March 2014, they began looking for a vendor to run this project. In October 2014, they signed their first contract with Geocom from St. Cloud, Minnesota. That contract is for \$3.9 million over five years with a five year renewal option. She was hopeful within the next few weeks a second contract would be ready to sign.

Representative Cronin requested a breakdown of the Nexgen funding into the future and asked if they anticipate having enough funds to do what Senate Bill 174 was designed to do. Ms. Rechtenbaugh said that in July 2012 the surcharge increased from \$1 to \$1.25 and will sunset back to \$1 in July 2018. Ms. Rechtenbaugh stated that they project receiving \$3.66 million per year through 2018 and a total five year cost of \$18.5 million. The board projects a positive balance in the fund through FY 2020. Ms. Rechtenbaugh added that in July 2018, when the surcharge sunsets, the annual revenue will be approximately \$909,000 from the two percent prepaid wireless surcharge.

Senator Heineman asked what the Nexgen 911 system will do versus the system being used today. Ms. Rechtenbaugh stated that the current system was built on old technology, which was developed around landlines. Most people now have wireless phones. The change in systems will not be something that a person calling 911 will notice, but the responders and the PSAP employees will notice the change. The new system will make it much easier to find those who need help and get the responders to them quicker. It will also allow the system to work with wireless phones much better and advance into the future as the phones change.

Senator Hunhoff asked if there were any upgrades the PSAP sites will have to perform. Ms. Rechtenbaugh stated that most centers will not have any expenses for upgrades. The ones that are not in compliance might have a few upgrades to take care of, but nothing major. The most common problem that was

discovered during the pre-deployment visit was a grounding issue in the equipment room. There were some centers with this issue and they know they need to fix that in order to be in compliance.

Senator Heineman moved, seconded by Representative Cronin, approval of the annual report of the 911 Coordination Board. Motion prevailed unanimously on a voice vote.

Item 2 – Department of Health – To provide an update on performance measures *(the bullet below is a document the Committee sent out)*

- [Letter to Health Doc.4](#)

Secretary Doneen Hollingsworth and Joan Adam, Director of Administration, Department of Health, were both present to address the Committee. A handout was provided to the Committee that detailed the Department's performance measures ([Health Performance Measures Doc. 14](#)). Ms. Hollingsworth discussed performance measures and how the measures have changed since 2004, when the "2010 Plan" was put into place. She explained that the current "2020 Plan" is a better plan and has more performance measures than the previous "2010 Plan." Ms. Hollingsworth explained that the document provided is a snapshot of the performance measures. She explained that the Department has data regarding every measure and that data is looked at for trends and other needed information.

Ms. Hollingsworth used the infant mortality rate as an example of how the Department takes all the data collected to study trends and to update performance measures as needed. A discussion followed regarding the infant mortality rate information that was provided to the Committee.

Senator Heineman asked if the legislative committees had input on the goals. Ms. Hollingsworth said that the Legislature has not had a part in creating the goals but the committees are always aware of what the goals are.

Ms. Annie Mehlhaff, Legislative Research Council, was present to address the Committee on how she delivers the performance measures to the different legislative committees. She stated that the departments that she has worked with have good data but they lack the context that the legislative committees are looking for. She discussed the use of the "stoplight report" to present performance measures in a consistent and understandable format.

Chair Tidemann thanked Secretary Hollingsworth, who announced her retirement, for nineteen years of dedicated service to the State of South Dakota.

Item 3 – Department of Agriculture – To provide follow-up information on food safety measures for unpasteurized dairy products and the results of meetings with producers *(the bullet below is a document the Committee sent out)*

- [Letter to Agriculture Doc.5](#)

Secretary Lucas Lentsch, Department of Agriculture, was present to address the Committee and provide an update on food safety measures for unpasteurized dairy products. He provided a document to the Committee that outlined the progress the raw milk work group has made on food safety measures ([Ag Update Doc.15](#)). He stated that the raw milk work group is comprised of raw milk producers, raw milk consumers, dairy industry staff, Department of Agriculture staff, members of the South Dakota Legislature, and members of academia. The work group has met three times in various locations and the number of attendees grew at each meeting.

Mr. Lentsch stated that the work group toured a dairy farm that produces raw milk for consumption, the South Dakota State University dairy farm and the Davis dairy plant. The work group also conducted a review of administrative rules and statutes. They discussed ideas and proposed legislation. The proposed legislation will include clarification for the producers, information on the access to raw milk for consumers, improved food safety measures, provide direction for inspectors and regulatory staff, and provide education and assistance to the producers.

Mr. Lentsch stated an educational program has been created. The program will provide knowledge of common health and food safety issues associated with production handling of raw milk and best practices to avoid food-borne illness. The educational program will assist producers in developing a plan and implement best practices at their farms. This program will be administered through local extension offices and successful completion of the program will be required to obtain a permit to produce raw milk for human consumption. Mr. Lentsch stated that a meeting is scheduled in November to work through the final draft of the proposed legislation and the work group will continue to work together throughout the rest of the year.

Senator Hunhoff wanted to know if the existing rules will allow producers to sell until the legislation is passed. Mr. Lentsch clarified that they will be able to continue selling raw milk using the current rules until the new rules are sent through legislation.

Senator Tidemann wanted to know if this was a group consensus on the report that is being presented. Mr. Lentsch said that the legislation is all a joint effort and as the chair of the raw milk work group he feels it is a good representation of the group. Senator Tidemann then wanted to know what the standards will be going forward. Mr. Lentsch stated that in terms of quality and the draft that is being sent forward, the thirty thousand bacterial limits will still be maintained. The item that was harder to agree on was the ten chloroform per milliliter limit, which is the standard for pasteurized milk. That standard is harder for raw milk to meet. He stated the reasonable level being discussed is fifty chloroform per milliliter.

Senator Lucas asked if there will be any oversight from the Department of Agriculture to make sure there will be no resale of the raw milk in grocery stores or anywhere else. Mr. Lentsch confirmed that there would be no resale of the raw milk.

Item 4 – Department of Social Services – To provide an update on the Medicaid management information system project *(the bullet below is a document the Committee sent out)*

- [Letter to Social Services Doc.6](#)

Secretary Lynne Valenti, Department of Social Services, was present to address the Committee. She stated that a successful plan has been developed to restart the program and move forward. Because of changes made by the Centers for Medicare and Medicaid Services (CMS), the previous proposals were not acceptable. The department requested a proposal to select a vendor to conduct an independent assessment of the current system and develop alternatives for moving forward. As part of the independent assessment, the vendor selected will make a determination of the percentage of completion on the prior contract with CNSI. CMS approved the request and the Department has received six proposals. The Department expects to select a vendor by the end of November 2014 and the assessment should be completed shortly after that.

Senator Hunhoff wanted to know if the Department was behind or how things were currently operating. Ms. Valenti said the provider enrollment portion is live and working correctly and the pharmacy point of sale is near completion. Ms. Valenti stated that payments and claims are being made correctly and that everything is working properly.

Senator Heineman asked for confirmation that CNSI was done and how much of the original contract with CNSI was spent. Ms. Valenti stated that CMS would not approve the funding for the proposal from CNSI and therefore that contract ended. Ms. Valenti stated that the original contract was for \$62.7 million and approximately \$50 million had been spent.

Senator Hunhoff asked if there will be a need for additional dollars to finish the project, above the \$12.7 left on the original contract. Ms. Valenti stated that after the assessment there will be more information on whether there will be more money requested and what that amount may be. She also confirmed that the State would have to match the funds at 10% of the 90/10 agreement, if the amount is more

than what is already set aside for this project. Representative Dryden asked if the money that is left on the original project was federal or state. Ms. Valenti stated that 90% of the \$12.7 million is federal and the other 10% is state funds.

Representative Mickelson asked how the state's Medicaid system was different than those systems used by private providers. Ms. Valenti stated that there are many different reporting requirements associated with the Medicaid program that private providers would not have. Ms. Valenti stated that the independent assessment will look into systems that are currently being used by private providers as options for moving forward.

Senator Heinemann asked what the Bureau of Information and Telecommunication's (BIT) role is, since there had been approval of additional full time equivalent positions (FTE's) for BIT for this program. Ms. Valenti said that BIT did request more FTE positions, but those positions are currently vacant because the program has not started up. She added that BIT was been actively involved in drafting the proposal for the independent assessment. BIT will also help decide who will run the program long-term. Senator Heinemann stated that it was her understanding that BIT would take over after the vendor was completed with the project and asked if this had now changed. Ms. Valenti confirmed that it is up for discussion again as to how the program will be run in the future.

Senator Tidemann asked what the estimated cost of the independent assessment was. Ms. Valenti stated that CMS has approved up to \$1.5 million on the assessment, but she expects the actual assessment to be substantially less than that.

Item 5 – Board of Regents – To discuss changes made to the contract authorization process since the EB5 program was under the South Dakota International Business Institute at Northern State University. To provide input on the proposed amendments to South Dakota Codified Laws 5-18A-17 and 3-16-7. (the bullet below is a document the Committee sent out)

- [Letter to Regents Doc.7](#)

Dr. Jack Warner, Executive Director for the South Dakota Board of Regents (BOR), Jim Shekleton, General Counsel for the BOR, and Nathan Lukkes, Assistant Vice President for Research for the BOR were all present to address the Committee.

Dr. Warner started by discussing what has been done to change the way contracts are authorized. He provided copies of policies to the Committee ([BOR Policies Doc.16](#)). One of the policies discussed the personnel who are allowed to sign contracts outside of the BOR. University Presidents, as well as Dr. Warner himself, are allowed to sign certain contracts that fall within specific guidelines. He says that it is very clear to the BOR employees who can and cannot sign contracts. Dr. Warner also stated that Mr. Bollen knew that he did not have the authority to sign any contracts.

Dr. Warner discussed the conflict of interest policy. He stated that there are two fundamental requirements for this policy: 1) that the conflict of interest be disclosed and 2) that the conflict be managed. Both of the policies discussed have been in place for many years and neither of those policies prevented Mr. Bollen from signing a contract he was not allowed to sign.

Dr. Warner said there is a conflict of interest policy form that has to be filled out on a yearly basis by every employee. The form is basically an outline of the current conflict of interest policy, but it is required to be refiled on a yearly basis. Also, if a conflict of interest comes up during the year, the employee is required to report the relationship within 30 days. This form was put into place in 2009 and Mr. Bollen was required to fill it out. Mr. Bollen did fill it out but did not report his conflict of interest.

Representative Cronin wanted to know what happens if something is done unknowingly by an employee that would actually constitute a conflict of interest. Dr. Warner stated that each situation is dealt with individually. If the policy is disregarded deliberately there may be disciplinary action, but if it was not done on purpose there would be ways to solve the conflict.

Senator Lucas asked why there was nothing done when Mr. Bollen's conflict of interest was discovered. Dr. Warner stated that in January 2009 the BOR was notified of the litigation filed in Federal District Court in California. The matter was handled accordingly in order to be able to rely on Mr. Bollen's testimony.

Senator Tidemann asked if the consulting form, that was required for policy 4:35, was still required. Mr. Shekleton said there is still a form and the form has been revised to have the same level of controls as the other policies. Senator Tidemann asked how Chief Executive Officers who serve on boards are approved. Dr. Warner stated that the policy was modified in 2010 and it says that if a President is going to serve on a board, that may do business with the institution, it must be disclosed to the BOR and it must be approved. It does not have to be renewed every year but they would need to disclose if the relationship with the board ends or if there is any conflict of interest.

Senator Lucas stated that he believed Mr. Bollen violated the BOR's fraud policy and asked if Dr. Warner believed he also violated this policy. Dr. Warner was not able to comment on whether or not a fraud was committed. Senator Lucas asked how many hours the BOR attorneys worked on the California litigation. Dr. Warner said he did not have the number of hours; however the legal fees amounted to \$510,000. Senator Lucas asked if any of those fees will be recouped and Dr. Warner said the arbitrator in California determined that each party would be responsible for their own fees. Going forward, the Board will discuss if there will be an attempt to pursue fees in the future.

Senator Tidemann wanted to know what fund paid for the fees. Dr. Warner said that about \$195,000 was paid out of some BOR reserve accounts and the rest came from the Extraordinary Litigation Fund held by the State.

Senator Heineman asked why NSU had no interest in SDRC when SDRC went private. Dr. Warner stated that both NSU and the BOR felt it was a business in which they had limited expertise and they wouldn't be able to manage it properly. He added that SDRC, Inc. was not recognized as a component of the BOR and therefore had no say in whether or not it went private.

Dr. Warner discussed the proposed amendments to South Dakota Codified Laws (SDCL) 5-18A-17 ([Draft Amendment to SDCL 5-18A-17 Doc.8](#)) and 3-16-7 ([Draft Amendment to SDCL 3-16-7 Doc.9](#)). There have been many drafts sent back and forth between all of the individuals involved in getting the amendments rewritten for the legislative session. It is still a work in progress and there has been a lot of time spent making sure it stops the conflict of interest issue, but does not stop the development of the State.

Item 6 – Committee discussion

There was discussion regarding the written responses from Mr. Joop Bollen ([Response from Mr. Bollen Doc.11](#) and [Response from Mr. Bollen Doc.11a](#)) to Committee questions ([Letter to Joop Bollen Doc.10](#)). Dr. Warner and Mr. Shekleton rejoined the meeting to answer some questions concerning NSU and the BOR. No further action was taken by the Committee regarding Mr. Bollen's written responses to Committee questions.

Senator Tidemann stated that a follow up letter was sent to U.S. Attorney Brendan Johnson ([Letter to U.S. Attorney Doc.12](#)) asking for a status update on any federal investigations. Senator Tidemann stated that no additional information was received ([Response from US Attorney Doc.17](#)).

Senator Tidemann asked for Committee authorization allowing him to approve the final report pertaining to House Concurrent Resolution 1010. Senator Heinemann moved to allow Senator Tidemann to approve future changes, seconded by Representative Cronin. Representative Wismer wanted it noted that the SDRC, Inc. issue had not been dealt with completely. Motion passed unanimously by voice vote.

Senator Tidemann asked for Committee authorization allowing him to approve the final Government Operations and Audit Committee annual report for the 2014 interim. Senator Tidemann stated that the draft report was presented to the Executive Board on Monday, November 10, 2014, by Mr. Flannery. Representative Wismer had several changes to the report and also wanted it noted that the language in the report regarding retiree information seemed too vague. Representative Cronin moved to allow Senator Tidemann to approve future changes, seconded by Representative Dryden. Motion passed unanimously by voice vote.

Mr. Flannery explained to the Committee that there are times when documents are handed out during a meeting and it is not always clear whether or not these documents are official Committee documents or not. Mr. Guindon stated that he believes the Committee can agree, as a whole, if all documents are allowed. If needed the Committee could state that all are allowed unless specifically excluded by the Committee. Representative Cronin stated he believes that any documents that are requested and received at a later date will go through the approval of the Committee Chair. The Committee agreed to decide at the end of the meeting which documents will be accepted into the Committee record. Documents that are deemed confidential by law will not be included as public record.

Mr. Flannery discussed with the Committee the idea of posting the drafted minutes on the LRC website before the next meeting. These drafted minutes would be posted as unapproved minutes and would then be posted as either approved minutes after the next meeting or as amended minutes if there is a change at the next meeting. The Committee decided they would like the posted minutes to be labeled as unapproved minutes until the next meeting approves them because of the amount of time between meetings.

Future Meeting Date

There is currently no future meeting date set. Senator Lucas moved to adjourn the meeting at 3:31 p.m., seconded by Representative Dryden, and carried by a voice vote.

This meeting is being held in a physically accessible location. Any individual needing assistance, pursuant to the Americans with Disabilities Act, should contact the Legislative Research Council (605-773-3251) in advance of the meeting to make further arrangements.

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